

**BEFORE THE INDIANACASE REVIEW PANEL**

In The Matter of M.W.	)	
Petitioner	)	
	)	
and	)	<b>CAUSE NO. 090611-75</b>
	)	
The Indiana High School Athletic Assoc. (IHSAA)	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-26-14 <i>et seq.</i>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**Procedural History**

On April 15, 2011, Petitioner, M.W., a junior at Alexandria High School (Alexandria) withdrew from Alexandria and enrolled at Yorktown High School (Yorktown) on April 18, 2011. On April 20, 2011, the Petitioner and his parents submitted an IHSAA Transfer Report ("Transfer Report") with the Indiana High School Athletic Association (IHSAA) and requested an athletic eligibility determination for the 2011-2012 school year.

On April 20, 2011, Alexandria, the sending school, completed its portion of the Transfer Report recommending that Petitioner receive ineligibility status under Rule 19-4. On April 25, 2011, Yorktown, the receiving school, completed its portion of the Transfer Report recommending Petitioner to receive full eligibility under rule 19-5. On April 25, 2011, the Assistant Commissioner of the IHSAA determined that Petitioner's transfer fell under Rule 19-4, Transfers for Primarily Athletic Reasons, and therefore, Petitioner would be ineligible at Alexandria until April 17, 2012.

In August, 2011, Petitioner sought review by the IHSAA Review Committee ("Review Committee") of the Commissioner's determination of ineligibility. The Review Committee conducted its hearing on August 31, 2011, and issued its decision dated the same day. The decision upheld the Commissioner's determination of ineligibility until April 17, 2012.

**APPEAL TO THE CASE REVIEW PANEL**

Petitioner appealed to the Indiana Case Review Panel<sup>1</sup> on September 6, 2011. On September 12, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting. The Panel requested and received the record from the IHSAA which was copied and provided to each participating member of the CRP. On September 22, 2011, the CRP held a meeting where a quorum of members was present.<sup>2</sup> In consideration of the record, the following Findings of Fact and Conclusions of Law were determined:

### **FINDINGS OF FACT**

1. Petitioner attended Alexandria until April 15, 2011. On April 18, 2011, he enrolled in Yorktown and began attending school there.
2. While at Alexandria, Petitioner was a varsity wrestler as a freshman and a sophomore as well as playing varsity baseball as a freshman.
3. According to the Transfer Report completed by Petitioner's parents on April 20, 2011, Petitioner's transferred from Alexandria to Yorktown to live with his mother who changed residences due to marital separation and currently lived in a rented home in Muncie, Indiana. The reason for the transfer is recorded on the Transfer Report as "Moving to Yorktown (Parent-Mother)."
4. Alexandria, the sending school, completed its portion of the Transfer Report on April 20, 2011. Alexandria recommended that Petitioner receive ineligible status because his change of residence was primarily motivated by Petitioner's desire to wrestle for Yorktown's coach.
5. Petitioner claims his transfer was due to educational reasons in that he was not successful at Alexandria.

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<sup>1</sup> The Case Review Panel (CRP) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

<sup>2</sup> Six members were present at the meeting, including Mr. Pat Mapes (chairperson), Ms. Cathy Klink, Mr. Michael Golembeski, Mr. Matthew Rager, Mr. Earl Smith, Mr. Keith Pempek. Ms. N. Renee Gallagher attended the meeting as counsel to the Panel.

6. Alexandria noted on its Transfer Report and in testimony that Petitioner's sister remained at Alexandria and Petitioner was provided a tutor during his freshman year at Alexandria and a private tutor (i.e., his sister) by his parents in his sophomore year.
7. Several pages of electronic communications between the Alexandria wrestling coach and Petitioner's father illustrated the father's overall dissatisfaction with the wrestling coach and wrestling program at Alexandria. Petitioner's father preferred the Yorktown coach and the Yorktown program.
8. Yorktown completed its portion of the Transfer Report on April 25, 2011 and recommended that Petitioner receive full eligibility under Rule 19-5.
9. On April 25, 2011, the Assistant Commissioner of the IHSAA determined that Petitioner's transfer fell under Rule 19-4, Transfers for Primarily Athletic Reasons, and therefore, Petitioner would be ineligible at Alexandria until April 17, 2012.
10. Petitioner timely filed his appeal with the Review Committee of the Commissioner's determination of ineligibility. The Review Committee conducted its hearing on or about August 31, 2011, and issued its decision dated the same day upholding the Commissioner's determination of ineligibility for Petitioner until April 17, 2012 under Rule 19-4 and Rule 17-7.4.
11. On September 6, 2011, Petitioner filed his appeal to the CRP.

### **CONCLUSIONS OF LAW**

1. Although the IHSAA (Respondent) is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the Respondent analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).
2. The CRP is established by the Respondent to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of the CRP. In the instant matter, the Respondent has rendered a final determination of student ineligibility for one year, until April 17, 2012 to the Petitioner. Petitioner has timely sought review by the CRP.

3. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent. The CRP is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination. I.C. 20-26-14-6(c)(3).
4. The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The Panel is required to hold a "meeting," I.C. 20-26-14-6(c)(2), not a hearing. The Panel is not required to collect testimony and information during the meeting but may collect testimony and information prior to the meeting. See I.C. 20-26-14-6(c)(1). If the Panel upholds the IHSAA decision, a court of jurisdiction may consider the IHSAA decision, I.C. 20-26-14-7(c), as opposed to the Panel decision. The IHSAA Review Committee hearing process provides students with due process protection. *Carlberg*, 694 N.E.2d at 241.
5. The Panel reviews the IHSAA determination for arbitrariness or capriciousness. See *Carlberg*, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious "only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion." *Id.* citing *Dep't of Natural Resources v. Indiana Coal Council, Inc.*, 542 N.E.2d 1000, 1007 (Ind. 1989).

Additionally, the Panel reviews whether an IHSAA decision is:

not a fair and logical interpretation or application of the association's rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence.

I.C. 20-26-14-7(c).

6. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.

7. Under IHSA Rule 19-4, any student who transfers from one school to a new school for primarily athletic reasons will not be eligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school.
8. Under IHSA Rule 17-7.4, provides that, in pertinent part, any student who submits false information or misrepresents a fact will be subject to sanctions which may include denial of eligibility.
9. The Assistant Commissioner issued his ruling on April 25, 2011 and found that the Petitioner transferred primarily for athletic reasons and therefore, under Rule 19-4, was ineligible to participate in athletics until April 17, 2012.
10. The Review Committee concluded that Petitioner was ineligible to participate in athletics by upholding the Assistant Commissioner's decision under Rule 19-4 and finding that Petitioner was also ineligible under Rule 17-7.4 for providing false or misleading information on the Transfer Report as no evidence was presented to support the assertion that the Petitioner transferred to Yorktown to live with his mother due to a separation by his parents.
11. Transfer was made primarily for athletic reasons: Substantial evidence exists in the record to show that Petitioner's father was not happy with the wrestling program or coach at Alexandria and, instead, preferred the coach at Yorktown which supports the claim that Petitioner transferred schools primarily for athletic reasons because Petitioner's father and Petitioner wanted to wrestle for Yorktown. Therefore, substantial evidence exists to support a finding under Rule 19-4.
12. Transfer was not made for educational reasons: Although there is some evidence in the record that Petitioner received tutoring in his freshman and sophomore years at Alexandria, there is little evidence in the record to support the assertion that Petitioner's transfer was motivated by educational needs. In fact, if education needs were the motivating factor for the transfer, it is not understandable why the Petitioner and his parents failed to mention this reason in the Transfer Report. Also, Petitioner's sister remained at Alexandria and reportedly was receiving a good education. In addition, two older sisters also graduated from Alexandria. Therefore, there is an insufficient amount of

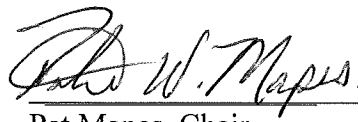
evidence to support a claim that Petitioner transferred to Yorktown because of an educational hardship under Rule 17-8.4.

13. Transfer was not made due to a bona fide change of residence: No evidence exists in the record to support a bona fide change of address as required for eligibility under Rule 19-4. There is no evidence in the record to support the assertion that Petitioner's transfer to Yorktown was motivated by his mother, following a separation from Petitioner's father, moving to Muncie, Indiana. The only reference to this assertion is in the Transfer Report section completed by Petitioner and his parents. There is no evidence in the record from hearing that Petitioner, his mother or his father even mentioned a change in marital status between Petitioner's parents as the reason for Petitioner's transfer to Yorktown at any point in the process of leaving Alexandria and enrolling in Yorktown. Therefore, a transfer due to a change of address under Rule 19-5 is not supported by the evidence.
14. Penalty found under Rule 17-7.4 by the Review Committee is supported by substantial evidence and is not arbitrary and capricious: It is further noted that the Review Committee found that Petitioner provided untruthful or misleading information on the Transfer Report and penalized Petitioner under Rule 17-7.4 with ineligibility. The lack of evidence in the record to support the information provided by Petitioner in his Transfer Report supports this penalty issued by the Review Committee.
15. The IHSA decision to provide Petitioner with ineligibility for one year, or until April 17, 2012, was not arbitrary, capricious or an abuse of discretion, or otherwise not in accordance with law, and the decision was supported by substantial evidence. Therefore, the IHSA Review Committee's determination that Petitioner transferred schools primarily for athletic purposes under IHSA Rule 19-4 and the penalty issued under Rule 17-7.4 is **upheld**.

### **ORDER**

The IHSA Review Committee order is hereby **AFFIRMED** by a vote of 5-0. The Petitioner is **INELIGIBLE** to participate in athletics **until April 17, 2012**.

DATE: 9-30-11

  
Pat Mapes, Chair  
Case Review Panel

### **APPEAL RIGHT**

Any party aggrieved by the decision of the CRP has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.